

Message Text

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PASS EB FOR BOEKER AND SMITH, L FOR FELDMAN, TREAS FOR
LANG, COMMERCE FOR ARRILL, CIEP FOR GRANFIELD, JUSTICE
FOR DAVIDOW

E.O. 11652: N/A

TAGS:EINV, EFIN, OECD

SUBJECT: MEETING OF INVESTMENT COMMITTEE (IME) DRAFTING
GROUP ON JAN 7 AND 8

REFS (A) OECD PARIS 33590, (B) IME (75)19 (1ST REVISION),
(C) RBP (75)7, (D) IME/WP/76.3, (E) IME (75)22
ANNEX III, (F) IME/WP/76.4, (G) IME (75)24,
(H) IME/WP/76.1, (I) IME (75)23
SUMMARY AND CONCLUSIONS

1. IN WHAT MAY HAVE BEEN ITS FINAL MEETING, IME DRAFT-
ING GROUP UNDERTOOK (A) COMPLETE REVIEW OF MNE GUIDE-
LINES, WITH PARTICULAR ATTENTION GIVEN TO REMAINING
CONTENTIOUS ISSUES IN RBP, LABOR, AND INFORMATION DISA-
CLOSURE PROVISIONS, AND (B) REVIEW OF NEW NATIONAL
TREATMENT DRAFT. (THERE WAS NO SUBSTANTIVE DISCUSSION
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OF INCENTIVES/DISINCENTIVES, ALTHOUGH SECRETARIAT CIRCU-

LATED ANALYTICAL PAPER ON THIS SUBJECT. RESULT WAS HIGHLY SUCCESSFUL TYPING DOWN OF MOST, ALTHOUGH NOT ALL, OF THE AREAS FOR COMPROMISE BLOCKED OUT IN DECEMBER IME MEETING (REFTEL A).

2. PARTICULARLY GRATIFYING WAS ACCEPTANCE FOR MNE GUIDELINES TEXT OF U.S. ENDORSED PARAS 7 AND 8 ON IND'L RELATIONS, AND EXPLANATORY FOOTNOTE ON GEOGRAPHIC BREAKDOWN, IN INFORMATION DISCLOSURE PROVISION, WITHOUT CHANGE OR RESERVATION. ALSO, POSITIVE REVISIONS OF MAJOR IMPORTANCE TO U.S. WERE MADE IN INTRODUCTION SECTION, PARTICULARLY STRENGTHENED LANGUAGE ON NON-DISCRIMINATION IN PARA 9, REMOVAL OF NEGATIVE REFERENCE TO ECONOMIC CONCENTRATION IN PARA 1, AND NEW LANGUAGE ON CONTRACTUAL OBLIGATIONS IN TRANSITIONAL PARAGRAPH. THERE WERE ALSO NUMEROUS HELPFUL MINOR DRAFTING CHANGES THROUGHOUT GUIDELINES TEXT.

3. LENGTHY MEETING BETWEEN U.S. DEL AND SECRETARIAT (VOGELAAR AND BERTRAND) ON JANUARY 6 WAS EXTREMELY HELPFUL IN LAYING GROUNDWORK FOR CONTRUCTIVE RESULT WHICH WAS ACHIEVED. SECRETARIAT MODIFIED ITS OWN PROPOSED PRESENTATION IN SOME SIGNIFICANT RESPECTS IN RESPONSE TO U.S. DEL COMMENTS, AND AGREED TO PRESENT IMPORTANT U.S. DRAFTS AS SECRETARIAT SUGGESTIONS. GENERALLY, SECRETARIAT TOOK SYMPATHETIC AND SUPPORTIVE POSTURE WITH REGARD TO U.S. DEL PRESENTATIONS ON MATTERS OF IMPORTANCE TO U.S. THOUGHOUT DRAFTING GROUP MEETING, DRAWING ON PRIOR REVIEW OF ISSUES WITH U.S. DEL.

4. KEY REMAINING ISSUES TO BE RESOLVED INCLUDE: (A) MAINTENANCE OF TIE TO COLLECTIVE BARGAINING CONTEXT IN PARA 2(B) OF MNE GUIDELINES; (B) INFORMATION DISCLOSURE REFERENCE IN LABOR AND INDUSTRIAL RELATIONS PROVISION; (C) BRACKETED LANGUAGE ON AFFILIATES IN PARA 3 OF RBP PROVISION; (D) SCOPE OF CONSULTATIONS; (E) COVERAGE OF INCENTIVES/DISINCENTIVES DOCUMENT, AND (F) FINAL COMPLETION AND APPROVAL OF U.S. COMPROMISE DRAFT ON NATIONAL TREATMENT. ALSO, NEW GEOGRAPHIC BREAKDOWN APPROACH TO INFORMATION DISCLOSURE IN MNE GUIDELINES HAS NOT BEEN LIMITED OFFICIAL USE

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FULLY ACCEPTED, WITH SWEDEN STILL CLINGING TO COUNTRY-BY-COUNTRY ALTERNATIVE. NONE OF THESE ISSUES OR OTHER REMAINING ODDS AND ENDS APPEAR TO BE OF A KIND WHICH SHOULD PRESENT SERIOUS OBSTACLE TO EARLY COMPLETION OF THE EXERCISE, GIVEN POLITICAL WILL TO DO SO BY MEMBER COUNTRIES IN THE IME.

AGENDA

5. VOGELAAR OPENED MEETING WITH PLEA FOR MAJOR MOVEMENT ON DRAFT TEXTS, NOTING THIS MAY WELL BE LAST DRAFTING GROUP MEETING. HE SET AN AGENDA DEALING WITH MNE GUIDELINE PROVISIONS ON RESTRICTIVE BUSINESS PRACTICES, EMPLOYMENT AND INDUSTRIAL RELATIONS, AND INFORMATION DISCLOSURE, IN THAT ORDER, TO BE FOLLOWED BY OVERALL GENERAL REVIEW OF GUIDELINES, TEXT, AND THEN CONSIDERATION OF NATIONAL TREATMENT DOCUMENT AND, TO EXTENT TIME AVAILABLE, INCENTIVES/DISINCENTIVES.

RESTRICTIVE BUSINESS PRACTICES

6. DISCUSSION WAS ON BASIS TEXT IN REFD0C C. SWISS MADE PROPOSAL FOR DELETION OF POINTS 2 AND 3, WITH SHIFT OF DISCRIMINATORY PRICING IDEA TO POINT 1 OF RBP SECTION AND ADDITION OF FOLLOWING LANGUAGE TO END OF POINT 2, IN GENERAL POLICIES SECTION OF GUIDELINES: "FOR INSTANCE, BY ALLOWING THEIR COMPONENT ENTITIES FREEDOM TO DEVELOP THEIR OPERATIONS CONSISTENT WITH THE NEED FOR SPECIALIZATION AND SOUND COMMERCIAL PRACTICE." SWISS ARGUED POINTS 2 AND 3 ARE LARGELY EXAMPLES OF BASIC PRINCIPLES IN 1 AND 4, AND ARE THEREFORE UNNECESSARY, AND PARTICULARLY INSISTED ON THEIR RESERVATION REGARDING AFFILIATES IN POINT 3.

7. VOGELAAR INDICATED RELUCTANCE TO MAKE MAJOR CHANGE TO

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TEXT THAT HAD ALREADY BEEN THROUGH RBP EXPERTS COMMITTEE TWICE, AND SUGGESTED REMOVAL OF BRACKETED LANGUAGE IN POINT 3 WOULD TAKE CARE OF SWISS RESERVATION. MOST OTHER DELS EXPRESSED SUPPORT FOR SWISS ON DELETION OF BRACKETED LANGUAGE, BUT WERE RELUCTANT TO GO ALONG WITH BROADER CHANGES, NOTING THESE WOULD REQUIRE ANOTHER REFERRAL TO EXPERTS COMMITTEE AND THUS DELAY WORK. U.K. WANTED TO PRESERVE BRACKETED LANGUAGE. U.S. DEL WAS GENERALLY SYMPATHETIC TO BROADER SWISS PROPOSAL, BUT SAW PROCEDURAL MERIT IN RESTRICTING AMENDMENTS TO JUST DELETING POINT 3, PREFERABLY WITH NO CONSEQUENTIAL ADDITION TO POINT 2 IN GENERAL POLICIES SECTION. SWISS COMMENTED THAT THEY ACTUALLY PREFER NO MODIFICATION OF GENERAL POLICIES SECTION AND HAD DRAFTED SUGGESTED LANGUAGE MERELY IN RESPONSE TO WHAT THEY UNDERSTOOD WERE CONCERNS OF OTHER DELEGATIONS. THUS, SWISS WOULD BE CONTENT WITH DELETION OF BRACKETED LANGUAGE IN POINT 3, AND NO OTHER CHANGES.

8. VOGELAAR CONCLUDED THAT HE WOULD REFER MATTER TO IME, NOTING THAT THERE WAS GENERAL FEELING IN DRAFTING GROUP LIMITED OFFICIAL USE

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THAT BRACKETED LANGUAGE IN POINT 3 SHOULD BE DELETED, BUT THAT IME WOULD HAVE TO MAKE FINAL DECISION (THIS EQUIVOCAL APPROACH NECESSARY IN VIEW OF CONTINUING U.K. RESERVATION). HE SAID HE WOULD ALSO SUBMIT, IN FORM OF SECRETARIAT NOTE, POSSIBLE LANGUAGE MODIFICATION TO POINT 2 OF GENERAL POLICIES SECTION, BASED ON SWISS PROPOSAL, ALTHOUGH NOTE WOULD ALSO INDICATE THAT DRAFTING GROUP DID NOT FAVOR SUCH INTRODUCTION OF A SPECIFIC RBP ISSUE INTO THE GENERAL POLICIES SECTION. (ITALIANS INTRODUCED SOME SUGGESTED CHANGES GOING TO QUESTION OF INTELLECTUAL PROPERTY, AND GIVING SPECIFIC EXAMPLE OF POINT 1(C), BUT DID NOT PRESS FOR THEM, WHEN OTHER DELS AND VOGELAAR TOOK POSITION THEY WERE UNNECESSARY AND WOULD RE-OPEN CAREFULLY-DRAFTED COMPROMISE TEXT.)

LABOR AND INDUSTRIAL RELATIONS

9. VOGELAAR INTRODUCED NEW SECRETARIAT DRAFT REFDOC D AS A MODIFICATION OF REFDOC E, NOTING THAT POINT 6 WAS A U.K. PROPOSAL AND THAT POINT 8 WAS SECRETARIAT ATTEMPT TO REFLECT VARIOUS CONCERNS EXPRESSED IN IME.(ACTUALLY,

LANGUAGE FOR POINT 8 WAS ORIGINALLY DRAFTED BY U.S., WHICH TEXT VOGELAAR, IN PRIOR MEETING WITH U.S. DEL, AGREED TO INCORPORATE IN SECRETARIAT PRESENTATION.) SECRETARIAT (DIAMOND) STRESSED THAT POINT 7 WAS VERY DELICATE COMPROMISE WORKED OUT IN AD HOC DRAFTING SESSION AT LAST TIME, AND HOPED IT WOULD NOT BE RE-OPENED. DIAMOND EXPLAINED THAT TUAC SUGGESTION TO GIVE "DUE REGARD TO INTERNATIONAL LABOR STANDARDS" WAS NOT INCLUDED, SINCE IT WAS FELT IT WOULD INTRODUCE DISCRIMINATION, I.E., IF INTERNATIONAL STANDARDS ARE PART OF LOCAL LAW THEY WILL BE OBSERVED BY MNE'S; IF NOT, MNE'S SHOULD NOT BE ASKED TO MEET STANDARDS NOT REQUIRED OF DOMESTIC FIRMS. NETHERLANDS DEL WANTED TUAC POINT IN, BUT WAS TURNED ASIDE BY VOGELAAR ON BASIS DISCRIMINATION ARGUMENT.

10. U.S. DEL INDICATED WOULD BE WILLING ACCEPT GENERAL INTRODUCTORY TEXT (CHAPEAU") WITH BRACKETED WORDS, "IN EACH COUNTRY..." LEFT IN, IF HELPFUL TO NETHERLANDS AND U.K., BUT WANTED TO DELETE REMAINDER OF BRACKETED LIMITED OFFICIAL USE

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RVLANGUAGE INCLUDING WORDS "ENTERPRISES SHOULD" BEFORE POINT 7. THIS POSITION WAS GENERALLY ACCEPTED. U.K. PREFERRED PRESERVINGTERACKETED LANGUAGE BEFORE POINT 7, BUT INDICATED IT WAS NOT AN IMPORTANT ISSUE. (U.K.DDEL WILL SEEK TO PERSUADE SUPERIORS IN LONDON OF WISDOM OF TAKING LANGUAGE OUT.) SWEDES ALSO SAID THEY PREFERRED SPLIT IN TEXT WHICH WOULD BE ACCOMPLISHED BY KEEPING BRACKETED LANGUAGE BEFORE POINT 7, BUT WULD NOT INSIST.

11. U.S. DEL SAID POINT 2(B) WOULD HAVE TO BE REDRAFTED TO PUT REQUEST FOR INFORMATION IN CONTEXT OF COLLECTIVE BARGAINING SO AS TO MAKE IT CONSISTENT WITH U.S. LAW AND PRACTICE; AND ALSO SUGGESTED DELETION OF EXPRESSION "TRUE AND FAIR," SINCE THIS IS SPECIALIZED ACCOUNTING CONCEPT WHICH ONLY INTRODUCES CONFUSION IN THIS CONTEXT. U.S. STRESSED THAT WE WERE NOW PREPARED TO MAKE MAJOR CONCESSIONS TO OTHERS ON POINTS 3, 7, AND 8 AND, IN TURN, NEEDED RESPONSE FROM OTHERS ON OUR CONCERNS ON POINT 2(B). U.S DEL STATED THAT WE ARE NOT PREPARED TO START DOWN ROAD OF EMPLOYEE PARTICIPATION IN MANAGEMENT BY RECOGNIZING LABOR RIGHT TO INFORMATION GOING BEYOND CONTEXT OF COLLECTIVE BARGAINING.

12. AFTER PRIVATE CONSULTATION WITH SECRETARIAT, U.S. DEL CAME UP WITH FOLLOWING COMPROMISE LANGUAGE (AIMED PRIMARILY AT ALLAYING CONCERNS BASED ON NARROWER EUROPEAN CONCEPT OF ISSUES COVERED BY COLLECTIVE BARGAINING): "...INFORMATION RELEVANT TO AND NECESSARY FOR NEGOTIA-

TIONS CONVERGING CONDITIONS OF EMPLOYMENT." THIS WAS
VIEWED AS STILL TOO NARROW BY U.K., SWEDEN, AND
NETHERLANDS, WHO ARGUED FOR DISCLOSURE OF INFORMATION
RELATED TO "THE PERFORMANCE AND DEVELOPMENT OF THE
ENTERPRISE." U.S. DEL SAID COULD GO NOT FURTHER AND
WOULD ACCEPT NO EUPHEMISM FOR LABOR PARTICIPATION IN
MANAGEMENT. GERMANY SUPPORTED U.S. POSITION, AND BOTH
U.S. AND GERMANY AGREED THAT SUGGESTED NEW LANGUAGE
COULD BE FURTHER IMPROVED BY INSERTING "BONE FIDE" BEFORE
"NEGOTIATIONS." IT WAS AGREED THAT THESE WERE MAJOR
ISSUES OF SUBSTANCE WHICH COULD NOT BE DRAFTED AWAY, AND
SECRETARIAT SAID IT WOULD FORWARD TO IME EXISTING TEXT
(FROM REFDOC D) AND U.S. PROPOSAL RE POINT 2(B), BOTH IN
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BRACKETS.

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16. IN POINT 5, NETHERLANDS SUGGESTED ADDING "AND WORK ENVIRONMENT" AFTER "LIVELIHOOD". THIS WAS SUCCESSFULLY OPPOSED BY U.S. DEL ON BASIS IT WOULD ADD ENTIRELY NEW CONCEPT, WHICH COULD INCLUDE, FOR EXAMPLE, KIND OF MACHINERY AND PACE OF PRODUCTION.

17. WITH REGARD TO POINTS 7 AND 8, U.S. DEL SAID THAT, WHILE WE ARE NOT HAPPY WITH THEM, WE ARE PREPARED TO ACCEPT THEM IF THEY PROVIDE A BASIS FOR AGREEMENT. IF OTHERS OPEN THEM, HOWEVER, WE HAVE A NUMBER OF CHANGES WHICH WE WOULD PRESS.

18. DUTCH DEL SAID HE OBJECTED TO POINT 7 BECAUSE OF LINK TO NEGOTIATIONS AND WANTED BRACKETS CARRIED FORWARD TO IME. FURTHER, HE CHARACTERIZED POSITION BEING TAKEN BY U.S. DEL AS "BLACKMAIL". VOGELAAR CHALLENGED DUTCH VIEW AND BLACKMAIL CHARACTERIZATION AND SAID THAT, IN FACT, U.S. HAD MADE MAJOR CONCESSION ON THIS ISSUE. HE ADDED THAT DRAFT HAD COME FROM IME AND COULD NOT SIMPLY LIMITED OFFICIAL USE

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BE REFERRED BACK TO FULL COMMITTEE. SWEDES ASKED WHETHER U.S. DEL COULD ACCEPT ADDITION OF "IN PART OR WHOLE" AFTER "OPERATING UNIT" IN POINT 7. U.S. COUNTERED THAT WE COULD EITHER TAKE DRAFT AS IS OR HAVE IT RE-OPENED FOR MODIFICATIONS. IN LATTER CASE, WE HAD CHANGES (E.G., SUBSTITUTION OF "TO FRUSTRATE CONCERTED EMPLOYEE ACTIVITY" FOR "UNFAIRLY INFLUENCE") WHICH WOULD HAVE TO BE CONSIDERED AT SAME TIME AS SWEDISH PROPOSAL. U.K., SWEDEN, ITALY AND OTHER DELS RESPONDED TO SECRETARIAT PLEA TO ACCEPT CAREFULLY BALANCED COMPROMISE TEXT WITHOUT CHANGE. NETHERLANDS AGREED NOT TO INSIST ON CONTINUANCE OF BRACKETS.

19. POINT 8 WAS ACCEPTED WITH LITTLE DISCUSSION. U.S. DEL STRESSED THAT POINT 8 WAS IN NO SENSE A CALL FOR THE INTERNATIONALIZATION OF LABOR NEGOTIATIONS, AN INTERPRETATION THAT HAD UNFORTUANTELY BEEN HINTED AT AS A POSSIBLE ONE IN VOGELAAR'S PRESENTATION OF THE AMENDED POINT 8. SECRETARIAT, WITHOUT OBJECTION FROM OTHER DELS, THEN AGREED WITH U.S. INTERPRETATION.

INFORMATION DISCLOSURE

20. VOGELAAR DESCRIBED THE NEW SECRETARIAT DRAFT (REFDOC F) AS A "COCKTAIL" INCORPORATING NUMEROUS SUGGESTIONS FROM VARIOUS SOURCES. (U.S. DEL HAD REVIEWED EARLIER VERSION OF THIS DRAFT WITH VOGELAAR AND OBTAINED HIS AGREEMENT TO MAKE SOME HELPFUL LANGUAGE CHANGES AND TO

INCLUDE U.S. EXPLANATORY FOOTNOTE ON GEOGRAPHICAL BREAK-DOWN.)

21. ON POINT 1, U.S. DEL SUGGESTED, WITHOUT OPPOSITION, THAT "MULTINATIONAL" BE REMOVED BEFORE "ENTERPRISE" IN INTEREST OF CONSISTENCY. ON POINT 2, U.S. EXPRESSED CONCERN THAT REFERENCE TO SIZE MIGHT START US DOWN SLIPPERY SLOPE OF MNE DEFINITIONAL ISSUE, WHICH WE HAD ALL AGREED TO AVOID. GERMAN DEL STATED SOME PREFERENCE FOR TAKING BOTH "NATURE AND SIZE" OUT, BUT GENERAL CONSENSUS DEVELOPED FOR LEAVING THEM IN. GIVEN LIMITING CONTEXT OF SIZE REFERENCE, U.S. DEL AGREED NOT TO PRESS FOR ITS DELETION ON BASIS OF GENERALLY-AGREED INTERPRETATION OF LIMITED OFFICIAL USE

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ION THAT INCLUSION IN THIS CONTEXT DID NOT RAISE OVERALL DEFINITIONAL ISSUE, AND ON CONDITION OF AGREEMENT ON OTHER INFORMATION DISCLOSURE POINTS. SWEDES CALLED FOR DELETION OF "IN CONFORMITY WITH LAW OF INDIVIDUAL COUNTRIES IN WHICH THEY OPERATE," BUT WITHDREW WHEN ASSURED BY OTHER DELS THAT THIS MEANT " AT THE SAME TIME AS..." AND DID NOT LIMIT DISCLOSURE TO THAT REQUIRED BY NATIONAL LAW. SWEDES ALSO WANTED REFERENCE TO NAMES OF SHAREHOLDERS PUT IN POINT 2, BUT RECEIVED NO SUPPORT FROM OTHER DELS OR SECRETARIAT. VOGELAAR SAID, WITHOUT OBJECTION, HE INTENDED TO DELETE WORDS "MULTINATIONAL" AND "CROSS" IN POINT 2.

22. ON SUB-PARAGRAPHS OF POINT 2, SWEDES TOOK POSITION THEY STILL WANTED COUNTRY-BY-COUNTRY BREAKDOWN, AND THEY DISTRIBUTED A DRAFT INCORPORATING THAT APPROACH. VOGELAAR, SUPPORTED BY U.S. DEL, EXPRESSED SHARP DISAPPOINTMENT WITH SWEDISH STAND, SAYING THAT CLEAR AGREEMENT HAD BEEN REACHED IN IME THAT WE SHOULD PROCEED ON BASIS GEOGRAPHIC BREAKDOWN PLUS AN EXPLANATORY FOOTNOTE ON THIS CONCEPT. VOGELAAR NOTED WITH SOME BITTERNESS THAT THERE WAS NO DIFFERENCE BETWEEN TEXT SWEDES NOW DISTRIBUTED AND ONE THEY SUBMITTED ON DECEMBER 19, BEFORE LAST IME. U.K. NOTED THAT OTHER COUNTRIES MAY ALSO HAVE RESERVATIONS ABOUT MOVING AWAY FROM COUNTRY-BY-COUNTRY APPROACH, BUT WE SHOULD NOW WORK ON GEOGRAPHIC APPROACH AND SEE LATER IN IME WHETHER BASIS FOR FINAL COMPROMISE EXISTS. SWEDES SAID THEY WILLING TO EXPLORE COMPROMISE POSSIBILITIES AND AGREED TO PROCEED ON THAT BASIS.

23. ON SUB-PARAGRAPH 2(III), SWEDES PROPOSED, AND OTHERS ACCEPTED, SUBSTITUTION OF "SALES" FOR "FINANCIAL," AND SHIFTING THE POSITION OF THIS WORD TO BEFORE "OPERATING RESULTS."

24. U.S. DEL INQUIRED WHY SUB-PARAGRAPH 2(IV) NOW INCLUDED BREAKDOWN BY PRODUCT LINE, AND WAS INFORMED THAT THIS WAS TUAC SUGGESTION SUPPORTED BY SWEDES. WE SAID IT WAS IMPRACTICAL, AND WE WANTED IT DELETED. AFTER DISCUSSION, WE AGREED TO CONSIDER SERIOUSLY ACCEPTING "SIGNIFICANT NEW CAPITAL INVESTMENT... AND, AS FAR AS LIMITED OFFICIAL USE

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PRACTICABLE, BY MAIN GROUPS OF PRODUCTS ON SERVICES."

25. ON SUB- PARAGRAPH 2(V), U.S. DEL CALLED FOR DELETION

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OF "TOTAL REMUNERATION" AS MEANINGLESS AND DANGEROUS IN THAT IT MIGHT GIVE RISE TO PRESSURES FOR UNACCEPTABLE REGIONAL BREAKDOWN OF RENUMERATION. SWEDES WANTED IT IN AND/, ADDITIONALLY, WANTED REGIONAL BREAKDOWN. U.K. WANTED "TOTAL" IN, SINCE ITS OMISSION MIGHT RAISE SUSPI-

CIONS. SECRETARIAT (BERTRAND) SAID "TOTAL" WAS MEANINGFUL SINCE IT GAVE INDICATION OF FIRM'S LABOR INTENSIVENESS. VOGELAAR CONCLUDED WE WOULD HAVE TO BRACKET "TOTAL REMUNERATION" FOR IME CONSIDERATION.

26. AT SWEDISH REQUEST, "PRACTICES" WAS DELETED FROM SUB-PARAGRAPH 2(VIII). U.K. EXPRESSED PREFERENCE FOR HAVING "INTRA-GROUP FINANCING" PUT IN, BUT U.S. DEL OPPOSED, AND VOGELAAR DECIDED THERE WAS NOT ENOUGH SUPPORT TO MAKE THAT CHANGE.

27. THERE WAS LITTLE DISCUSSION AND NO OBJECTIONS TO REMAINING INFORMATION DISCLOSURE PARAGRAPHS, INCLUDING EXPLANATORY FOOTNOTE ON GEOGRAPHIC BREAKDOWN. (BEFORE PRESENTATION, SECRETARIAT HAD DELETED FINAL SENTENCE FROM U.S. PROPOSED FOOTNOTE. WHILE THIS DELETION NO LIMITED OFFICIAL USE

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PROBLEM FROM U.S. VIEWPOINT, IT WAS SOMEWHAT SURPRISING THAT OTHER DELS DID NOT OBJECT TO ABSENCE OF CONCEPT EXPRESSED IN LANGUAGE THUS LEFT OUT.)

INTRODUCTION SECTION OF MNE GUIDELINES

28. VOGELAAR BEGAN SECOND DAY OF MEETING BY OPENING GENERAL DRAFTING REVIEW OF REMAINDER OF GUIDELINES (REFDOC B). HE PROPOSED, WITHOUT OBJECTION, TO REPLACE "UNDERSIRABLE" WITH "ABUSE OF" IN IMV ODRTION SZRTION, PARA 1, IN REFERENCE TO ECONOMIC CONCENTRATION. AT U.S. DEL SUGGESTION, "AND DIVERSITY" WAS TAKEN OUT AND "DIVERSE" WAS ADDED AFTER "THEIR" IN SAME CONTEXT.

29. TO MEET ITALIAN POINT, "AND TO CONTRIBUTE TO IMPROVING THE INVESTMENT CLIMATE" WAS ADDED TO END OF PARA 2. AT NORWEGIAN REQUEST, "SCIENCE" WAS ADDED TO TECHNOLOGY IN PARA 4 (AND ALSO IN TITLE OF TECHNOLOGY PROVISION).

30. MINOR DRAFTING CHANGES WERE MADE IN PARAS 5, 6, 7 AND 8. U.S. DEL RESISTED SUGGESTED CHANGE OF "LOCAL UNITS" TO "ENTITIES," IN PARA 8, TO PRESERVE IMPLICATION THAT GOVERNMENT NORMALLY LOOK TO LOCAL UNITS. U.S. DEL CONCEDED MEANING OF LAST SENTENCE PARA 8 HAS BECOME OBSCURE, AND AGREED TO ATTEMPT TO DRAFT SOMETHING BETTER, BUT EMPHASIZED WE WANT TO KEEP PRESENT LANGUAGE UNLESS WE CAN COME UP WITH CHANGE THAT CAN CARRY OUR AGREED, RATHER SUBTLE MEANING MORE CLEARLY.

31. THE U.S. CIRCULATED NEW LANGUAGE FOR PAR 9 OF INTRODUCTION.

BEGIN TEXT

THE GUIDELINES ARE NOT AIMED AT INTRODUCING DIFFERENCES OF TREATMENT BETWEEN MULTINATIONAL AND DOMESTIC ENTERPRISES; WHEREVER RELEVANT THEY REFLECT GOOD PRACTICE FOR ALL ENTERPRISES. ACCORDINGLY, GOVERNMENTS SHOULD ENTERTAIN THE SAME EXPECTATIONS OF MULTINATIONAL AND DOMESTIC LIMITED OFFICIAL USE

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ENTERPRISES WHEREVER THE GUIDELINES ARE RELEVANT TO BOTH.

END TEXT

BUTCH AND SWEDEN ATTACHED NEW U.S. LANGUAGE ON PARA 9 ON BASIS THAT MORE SHOULD BE EXPECTED OF MNE'S. U.S. DELEGATION REACTED SHARPLY THAT WE COULD NOT AGREE PURPOSE OF EXERCISE WAS TO DISADVANTAGE MNE'S VIS-A-VIS DOMESTIC FIRMS. WE POINTED OUT THAT ADDITIONAL LANGUAGE SIMPLY MADE EXPLICIT WHAT WAS ALREADY IMPLICIT IN THE AGREED PARA 9 LANGUAGE, AND THAT NON-DISCRIMINATION WAS A FUNDAMENTAL OECD PRINCIPLE. AFTER EXTENDED DEBATE, IT WAS AGREED U.S. LANGUAGE WOULD GO FORWARD WITH MODIFICATION TO TAKE OUT DIRECT REFERENCE TO GOVERNMENTS (I.E., "...SUBJECT TO SAME EXPECTATIONS..." INSTEAD OF "...GOVERNMENTS SHOULD ENTERTAIN SAME EXPECTATIONS OF..."). SWEDISH AGREEMENT WAS GRUDGING, WITH SWEDEN SAYING HE WAS AGREEING IN "PRIVATE CAPACITY" TO NO BRACKETS, BUT SWEDEN MAY COME BACK ON THIS.

32. IN PARA 10, "ARISING FROM" CHANGED TO "RELATING TO" IN RELATION MNE PROBLEMS AND "ACTIVITIES OF" OMITTED.

TRANSITIONAL PARAGRAPH OF MNE GUIDELINES

33. SECRETARIAT PRESENTED NEW DRAFT TO TRANSITIONAL PARAGRAPH, WHICH WAS BASED ON U.S. PROPOSAL.

BEGIN TEXT

HAVING REGARD TO THE FOREGOING CONSIDERATIONS, THE MEMBER COUNTRIES SET FORTH THE FOLLOWING GUIDELINES FOR MULTINATIONAL ENTERPRISES (HEREINAFTER REFERRED TO AS "ENTERPRISES") WITH THE UNDERSTANDING THAT MEMBER COUNTRIES WILL FULFILL THEIR RESPONSIBILITIES TO TREAT ENTERPRISES EQUITABLY AND IN ACCORDANCE WITH INTERNATIONAL LAW AND INTERNATIONAL AGREEMENTS,

AS WELL AS CONTRACTUAL OBLIGATIONS TO WHICH THEY
HAVE SUBSCRIBED.
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SP-02 TRSE-00 CIEP-01 LAB-04 SIL-01 OMB-01 JUSE-00

TAR-01 FTC-01 STR-04 DODE-00 PM-04 H-02 L-03 NSC-05

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IT GAINED GENERAL ACCEPTANCE AFTER CONSIDERABLE DIS-
CUSSION. U.S. DEL ASSURED JAPAN THAT EQUITABLE TREAT-
MENT WAS BROAD TERM WHICH WAS NOT SYNONOMOUS WITH
NATIONAL TREATMENT BUT, RATHER, MEANT MORE NEARLY "NOT
ARBITRARY." WE ADDED THAT "RESPONSIBILITY" WAS CHOSEN
AS MORE LOOSE TERM THAN "DUTY" TO ACCOMMODATE JAPAN AND
CANADA.

OTHER SECTIONS OF MNE GUIDELINES

34. GENERAL POLICIES SECTION: APPROVED WITH MINOR DRAFTING CHANGES IN PARAS 1 AND 3. PARA 4 DROPPED AT INITIATIVE OF SECRETARIAT AS ESSENTIALLY MEANINGLESS. U.S. DEL NEUTRAL ON THIS ISSUE. U.K. LIKED PARA 4 AND RESERVED RIGHT TO SEEK TO RE-INSERT IT AT NEXT IME. WP ACCEPTED GERMAN PROPOSAL TO ADD "TAKING DUE ACCOUNT OF INDIVIDUAL QUALIFICATIONS" AT END OF PARA 5.

35. FINANCING SECTION: GREEKS PROPOSED FOLLOWING ADDI-
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TION:

"EVALUATE THEIR TRANSACTIONS WITH OTHER COUNTRIES ON THE BASIS OF INTERNATIONAL PRICES, I.E., NOT OVERPRICE THEIR IMPORTS OR UNDERPRICE THEIR EXPORTS, IN ORDER TO MINIMIZE UNFAVORABLE EFFECTS ON THE BALANCE OF PAYMENTS OF THE HOST COUNTRY."

36. U.S. DEL, JOINED BY OTHERS, TOOK POSITION THAT IF GREEKS HAD IN MIND TRANSFER PRICING, FINANCING WAS WRONG PLACE FOR IT, AND IF THEY WERE CONCERNED ABOUT TRADE TRANSACTIONS IN GENERAL, THIS WAS OUTSIDE OUR MANDATE. U.S. SUGGESTED THAT WE MIGHT CONSIDER A NEW PROVISION, WHICH WOULD BE A BROADENED VERSION OF THE SECOND PARAGRAPH OF THE TAX PROVISION, WHICH WOULD INCORPORATE AN ARMS-LENGTH STANDARD FOR TRANSFER PRICING. IT WAS AGREED THAT GREEKS WOULD WORK OUT WITH SECRETARIAT SUITABLE LANGUAGE TO COVER THEIR CONCERNS.

37. TAXATION SECTION: U.S. DEL SAID THIS HAS GIVEN RISE TO EXPRESSIONS OF CONCERN IN U.S. BUSINESS COMMUNITY AND WE MAY WANT TO COME BACK ON IT IN THE IME.

38. CONSULTATION PROCEDURES: IN BRIEF DISCUSSION IT WAS AGREED TO ADD, "...WILL ALSO INVITE BIAC AND TUAC PERIODICALLY..." TO END OF PARA 1. DISCUSSION ON PARA 2 RE-SURFACED DIFFERENCES, PARTICULARLY BETWEEN U.S. AND SWEDEN ON CONSULTATIONS ON "SPECIFIC" AS OPPOSED TO "GENERAL" ISSUES, AND QUESTION OF HOW MNE VIEWS WERE TO BE REPRESENTED IN THE CONSULTATIONS. IT WAS AGREED THAT THESE ISSUES WERE SUBSTANTIVE AND WERE TO BE LEFT TO IME FOR RESOLUTION.

NATIONAL TREATMENT INSTRUMENT

39. U.S. DEL PRESENTED AMENDMENT OF REFDOK G PREPARED AT REQUEST OF IME. SEVERAL MINOR DRAFTING CHANGES WERE PROPOSED AND ACCEPTED. MAIN SUBSTANTIVE DISCUSSION WAS

ON ISSUE OF PROPOSED EEC RESERVATION CLAUSE AND OF U.S. SUGGESTION OF ADDING CONTRACTS TO PROVISION ON OTHER INTERNATIONAL AGREEMENTS. VOGELAAR ARGUED THAT INCLU-
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SION OF CONTRACTS MIGHT BE READ AS LOOPHOLE FOR DEROGA-
TIONS BASED ON PRIVATE AGREEMENTS. U.S. DEL SAID CON-
FUSION MAY RESULT FROM MISPLACEMENT OF THIS PROVISION
IN DECLARATION RATHER THAN DECISION PART OF DOCUMENT.
VOGELAAR, SUPPORTED BY GERMANS, TOOK POSITION THAT BEST
SOLUTION WOULD BE TO DROP ENTIRE PROVISION AS UNNECESSARY
PROTECTION IN A NON-LEGALLY BINDING DOCUMENT OF THIS
KIND. U.S. DEL AGREED TO TAKE COMMENTS INTO ACCOUNT
AND INFORM SECRETARIAT NEXT WEEK OF RESULTS OF A REVIEW
OF OUR POSITION ON THIS POINT.

40. EEC OBSERVER, SUPPORTED BY GERMANY, PRESSED CASE
FOR EEC RESERVATION AS NECESSARY TO AVOID MAKING IT
IMPOSSIBLE FOR EEC MEMBER COUNTRIES TO NOTIFY EXCEPTIONS
BECAUSE OF STRONGER, BINDING NATIONAL TREATMENT COMMIT-
MENTS THEY HAVE TO OTHER COMMUNITY MEMBERS. U.S. DEL
POINTED OUT WE ARE IN SAME POSITION WITH RESPECT TO OUR
FCN TREATY PARTNERS, AND SAID THAT EEC HAD STILL NOT
MADE A CONVINCING CASE FOR THE NEED FOR THIS RESERVA-
TION. VOGELAAR AGREED WITH U.S. AND URGED EEC TO THINK
THROUGH ITS POSITION MORE CLEARLY AND, IF POSSIBLE, MAKE
A MORE PERSUASIVE CASE FOR IT. EEC OBSERVER AGREED, BUT
IN MEANTIME ASKED THAT DRAFT TEXT OF EEC RESERVATION
(WHICH EEC HAD GIVEN TO SECRETARIAT) BE SHOWN IN BRACKETS
IN PRESENTATION TO IME.

41. GREEKS AND OTHERS WANTED PARA 12, EXEMPTING ESTAB-
LISHMENT, TO BE PLACED RIGHT AFTER FIRST PARAGRAPH, AND
BERTRAND (SECRETARIAT) SAID PARAGRAPH NEEDED REDRAFTING
TO GET OUT INAPPROPRIATE REFERENCE TO "EXCEPTION." IT
WAS AGREED THAT EARLIER SECRETARIAT PARAGRAPH ON THIS
POINT WOULD BE USED (PARA 4, REFDOC G), AND THAT IT
WOULD BECOME PARA 2.

INCENTIVES/DISINCENTIVES INSTRUMENT

42. SECRETARIAT (BERTRAND) PUT FORWARD NEW PAPER
(REFDOC H) WITH ANALYSIS OF INCENTIVES/DISINCENTIVES
EXERCISE WHICH SUGGESTS CONCLUSION THAT CONCEPT OF
INSTRUMENT IS BEING NIBBLED AWAY TO A POINT WHERE THERE
IS VERY LITTLE THAT IS SUBSTANTIVELY MEANINGFUL LEFT.
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SINCE DRAFTING GROUP TOOK UP ISSUE ONLY LATE ON THE
SECOND DAY, IT WAS DECIDED THAT BERTRAND'S PAPER COULD
BE FORWARDED TO IME AS SECRETARIAT EFFORT, BUT SHOULD

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ACTION EUR-12

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CARRY NO IMPLICATION THAT DRAFTING GROUP HAD APPROVED OR
EVEN DISCUSSED IT. THERE WAS NO SUBSTANTIVE DISCUSSION
OF THE INCENTIVES/DISINCENTIVES DOCUMENT (REFDOC I).

NEXT MEETING

43. THE QUESTION OF WHETHER ANOTHER DRAFTING GROUP MEET-
ING WOULD BE NEEDED WAS LEFT OPEN FOR CONSIDERATION BY
THE IME.

ACTION REQUESTED

44. MISSION WOULD APPRECIATE RECEIVING REPLY TO SECRE-

TARIAT AS PROMISED IN PARA 39 ABOVE.

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